

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

June 28, 1999

UNITED STATES OF AMERICA,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324b Proceeding
)	OCAHO Case No. 98B00051
)	
AGRIPAC, INC.,)	
Respondent.)	
_____)	

FINAL DECISION AND ORDER
BASED ON CONSENT FINDINGS

This is an action in which the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) alleged that Agripac, Inc. engaged in a pattern and practice of discriminatory employment practices in violation of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1324b (INA). Agripac denied the material allegations of the complaint and raised certain affirmative defenses. Discovery and motion practice followed and a hearing was scheduled for the final week of July 1999 in Portland, Oregon.

On June 17, 1999, the parties filed a Joint Motion for Entry of Decision and Order Based on Consent Findings, together with the Consent Findings signed by counsel for OSC, for Agripac, and for the persons alleged to have been affected by the hiring practices complained of.

Under § 68.14(a) of the OCAHO Rules of Practice and Procedure:¹

- (a) Where the parties or their authorized representatives or their counsel have entered into a proposed settlement agreement, they shall:
 - (1) Submit to the presiding Administrative Law Judge:
 - (I) The proposed agreement containing consent findings; and
 - (ii) A proposed decision and order;

¹ Rules of Practice and Procedure for Administrative Hearings, 64 Fed. Reg. 7066 (1999)(to be codified at 28 C.F.R. Part 68) (hereinafter cited as 28 C.F.R. § 68).

or (emphasis added)

- (2) Notify the Administrative Law Judge that the parties have reached a full settlement and have agreed to dismissal of the action. Dismissal of the action shall be subject to the approval of the Administrative Law Judge, who may require the filing of the settlement agreement.

28 C.F.R. § 68.14.

I find that the Consent Findings comply generally with the requirements of § 68.14 (b) and (c) in timeliness, form, and substance with one exception. Paragraph 28 of the Consent Findings as submitted provides for a manner of enforcement inconsistent with the mechanism specified in 8 U.S.C. § 1324b(j). Accordingly, after notice to the parties, I have stricken proposed Paragraph 28 and renumbered the remaining paragraphs.

The parties and affected individuals have otherwise stipulated as follows:

1. This action was brought by the Special Counsel to enforce the provisions of 8 U.S.C. § 1324b(a).
2. Agripac, an Oregon cooperative corporation, formerly engaged in the business of processing, freezing, canning, labeling, and distributing vegetables. At all times relevant to this action, Agripac employed more than 14 employees.
3. On or about March 16, 1998, the Special Counsel filed a timely Complaint with OCAHO charging Agripac with four counts of unfair immigration-related employment practices in violation of 8 U.S.C. § 1324b(a)(1)(B) and (a)(6).
4. Specifically, the Special Counsel alleged that Agripac refused to accept the Social Security card presented by Agustin Lua Talavera to establish employment eligibility, even though the document appeared genuine on its face, and rejected other valid and sufficient employment eligibility verification documents proffered by Mr. Talavera. The complaint further alleged that Agripac treated Mr. Talavera differently than other applicants because of his perceived citizenship status. In addition, the complaint alleged that Agripac maintained a pattern or practice of citizenship status discrimination and unfair documentary practices in violation of 8 U.S.C. §§ 1324b(a)(1)(B) and (a)(6) by requiring applicants who looked or sounded foreign to produce specific documentation to establish employment eligibility before providing an employment application.
5. On or about April 14, 1998, Agripac filed an Answer with OCAHO denying the allegations of the Special Counsel's Complaint. The Answer specifically denied that Agripac discriminated against Mr. Talavera, or committed any act in violation

of 8 U.S.C. § 1324b. It also set forth four affirmative defenses. On or about July 23, 1998, Agripac filed an Amended Answer denying the allegations of the Complaint. The Amended Answer set forth five affirmative defenses.

6. On or about February 23, 1999, the Special Counsel filed an Amended Complaint, which was objected to by Respondent. The Amended Complaint, inter alia, set forth additional counts concerning charges filed with the Office of Special Counsel by Antonio Raymundo Sanchez and Eligio Santiago-Lopez.
7. On or about January 4, 1999, Agripac filed a voluntary petition for bankruptcy under Chapter 11 of the Bankruptcy Code. The petition was filed with the United States Bankruptcy Court in Eugene, Oregon.
8. The parties agree that this action was settled during the course of discovery and prior to a determination on the merits. Agreement to these Consent Findings shall not be deemed, or construed, to be an admission of liability by Agripac.
9. Agripac agrees to pay a civil penalty to the United States of forty-five thousand dollars (\$45,000) payable to the United States Treasury.
10. Agripac agrees to pay back pay to Agustin Lua Talavera for \$244.26, Antonio Raymundo Sanchez for \$635.00, and Eligio Evaristo Santiago-Lopez for \$2,304.00. The Special Counsel alleges that Messrs. Sanchez and Santiago are two additional applicants who were refused hire by Agripac for discriminatory reasons.
11. On or before April 26, 1999, the Special Counsel will file a Proof Claim form with the Bankruptcy Court in Eugene, Oregon for the civil money penalty referenced in paragraph 9 above.
12. On or before April 26, 1999, the Special Counsel will file Proof of Claim forms with the Bankruptcy Court in Eugene, Oregon for the back pay referenced in paragraph 10 above.
13. The proof of claim forms filed by the Special Counsel referenced in paragraphs 11 and 12 above will seek unsecured nonpriority status.
14. Agripac will not contest, challenge, attack or otherwise dispute the claims set forth in the proof of claim forms filed by the Special Counsel with respect to this matter.
15. Agripac agrees that it shall not discriminate on the basis of citizenship status or national origin in violation of 8 U.S.C. § 1324b.
16. Agripac agrees that it will not refuse to honor documentation presented for

employment eligibility verification and reverification purposes that on its face reasonably appears to be genuine, relates to the person, and satisfies the requirements of 8 U.S.C. § 1324a(b).

17. Agripac agrees that it will not request, for purposes of satisfying the employment eligibility verification requirements of 8 U.S.C. § 1324a(b), more or different documents than are required by law.
18. Agripac agrees that it will allow employees, including non-U.S. citizen employees, to present any document or combination of documents acceptable by law for purposes of satisfying the employment eligibility verification requirements of 8 U.S.C. § 1324a(b).
19. Agripac agrees that it will not discriminate or retaliate against any individual for his/her participation in this matter.
20. Agripac agrees to recommend to the companies that purchase it the posting and distribution of the attached Notice (Attachment A) in all places within the purchasing companies where applicants apply for work, including places where notices to employees and job applicants are normally posted, for a period of not less than one year.
21. Agripac agrees to recommend to the companies that purchase it the making available of a copy of the attached brochure (Attachment B) to each applicant for employment, for a period of not less than one year. Agripac will recommend that this (sic) the purchasing companies place a sufficient quantity of brochures in all places where applicants apply for work, including places where notices to employees and job applicants are normally posted.
22. The Special Counsel will provide the notice and brochure referenced in paragraphs 20 and 21 at no cost to the purchasing companies.
23. Agripac agrees to recommend to the purchasing companies the distribution of a copy of the attached Handbook for Employers (Attachment C), including revised INS Form I-9, to all managers and employees who have any role in completing the INS Form I-9, or who instruct employees or prospective employees on the proper completion of the form.
24. Agripac agrees to recommend to the purchasing companies that they educate their personnel concerning their responsibilities under 8 U.S.C. § 1324b within two months of the date of the Administrative Law Judge's Decision and Order. Appropriate personnel includes all employees responsible for formulating and/or carrying out employment eligibility verification policies and procedures, including all managers and employees who have any role in completing the INS Form I-9,

and/or who instruct employees or prospective employees on the proper completion of the form. The Office of Special Counsel agrees to provide such training, at not cost to the purchasing companies.

25. The Special Counsel agrees that it will take no further action against Agripac for any unfair immigration-related employment practice alleged in the Complaint and Amended Complaint through the date of the Administrative Law Judge's Final Decision and Order. Agustin Lua Talavera, Eligio Evaristo Santiago-Lopez, and Antonio Raymundo Sanchez waive and release all claims against Agripac for any unfair immigration-related employment practice through the date of the Administrative Law Judge's Final Decision and Order.
26. The parties understand that except as provided for in the preceding paragraph, no individual is barred from filing a charge alleging an unfair immigration-related employment practice within the time limitations allowed by law, and that agreement to these Consent Findings does not affect the right of the Special Counsel to investigate or prosecute such charges.
27. The parties agree to bear their own costs, attorney fees and other expenses incurred in this action.
28. The Decision and Order shall have the same force and effect as a decision and order made after a full hearing.
29. The entire administrative record on which the Decision and Order is based shall consist solely of the Complaint, Notice of Hearing, Answer, and all other pleadings filed with or entered by the Administrative Law Judge through the date the Consent Findings are filed.
30. The parties waive any further procedural steps before the Administrative Law Judge.
31. The parties waive any right to challenge or contest the validity of the Decision and Order entered in accordance with these Consent Findings.

The terms of this agreement are accepted as a full and final disposition resolving all issues raised by the complaint.

SO ORDERED.

Dated and entered this 28th day of June, 1999.

Ellen K. Thomas
Administrative Law Judge

Appeal Information

In accordance with the provisions of 8 U.S.C. § 1324b(g)(1), this Order shall become final upon issuance and service upon the parties, unless, as provided for under the provisions of 8 U.S.C. § 1324b(i), any person aggrieved by such Order seeks timely review of that Order in the United States Court of Appeals for the circuit in which the violation is alleged to have occurred or in which the employer resides or transacts business, and does so no later than 60 days after the entry of such Order.

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of June, 1999, I have served copies of the foregoing Final Decision and Order Based on Consent Findings on the following individuals at the addresses indicated:

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